

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**


Nathaniel Johnson, Jr., #211574,)	
)	
Petitioner,)	Civil Action No. 1:16-834
)	
vs.)	
)	
Warden Joseph McFadden,)	ORDER
)	
Respondent.)	
)	
)	

This matter was referred to the Magistrate Judge for pre-trial proceedings pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, with the final disposition authority remaining with the District Court. The Magistrate Judge issued a Report and Recommendation (“R & R”) on April 7, 2016, recommending that Petitioner’s now third habeas petition be dismissed as successive because he had failed first to obtain authorization from the Fourth Circuit Court of Appeals to file a successive petition, as provided in 28 U.S.C. § 2244(b)(3). (Dkt. No. 12). Petitioner filed objections to the R & R and moved for a certificate of appealability on April 22, 2016. (Dkt. Nos. 14, 15). This Court adopted the R & R as the order of the Court on May 6, 2016, denied the certificate of appealability, and dismissed the action. (Dkt. No. 17). Petitioner then filed, on May 9, 2016, a motion to vacate the order on the mistaken belief that the decision had been rendered by the Magistrate Judge on a referral without his consent under Rule 73(b) of the Federal Rules of Civil Procedure. (Dkt. No. 20).

The final decision in this matter was made by this Court, not the Magistrate Judge, and

there was no Rule 73(b) referral in this case. A referral under Rule 72(b), to handle pre-trial matters and make a Report and Recommendation to the District Court, does not require the consent of the parties. Consequently, the Petitioner's motion to vacate the order of this Court is without merit and is, therefore, DENIED.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel
United States District Judge

May 13 2016
Charleston, South Carolina